

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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, ID No.

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In Re:

Refer Reply To:

CC:CORP:2 – PLR-135192-03

Date:

December 08, 2003

Distributing =

Company R =

Parent =

Sub #1 =

Sub #2 =

Sub #3 =

Controlled =

Sub #4 =

Sub #5 =

Sub #6 =

Sub #7 =

Business A =

Business Segment B =

Business Segment C =

Business Segment D =

Date 1 =

Country X =

Country Y =

a =

b =

c =

d =

e =

Sub #1 Loan =

Dear

This is in response to a letter, dated June 3, 2003, on behalf of Distributing, requesting rulings under § 355 of the Internal Revenue Code (the "Code") with respect to a proposed transaction. Additional information was received in letters dated July 31, 2003, August 28, 2003, and December 2, 2003.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. The material information is summarized below.

Distributing is the common parent of an affiliated group that files a consolidated federal income tax return on a calendar year basis. Distributing's stock is wholly owned by Company R, a Country X entity treated as a corporation for United States federal tax purposes, whose stock in turn is indirectly held e% (more than 99%) by Parent, a Country Y company.

Distributing is a holding company with no material assets other than the stock of Sub #1. Sub #1 is a holding company with no material assets other than the stock of Sub #2, the stock of Sub #3, and intercompany receivables. Sub #2 is a holding company with no material assets other than the stock of Sub #4, Sub #5, Sub #6, Sub #7, and Controlled, and intercompany receivables. Distributing has supplied information indicating that Sub #4, Sub #5, Sub #6, and Controlled have had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Controlled is engaged in Business A. Business A is part of Business Segment B. The companies owned by Company R are also engaged in Business Segment C and Business Segment D. The management of the Company R group has decided that it is necessary and appropriate to restructure some of its subsidiaries to form a worldwide Business Segment B business. Ultimately, Company R would like to create separate worldwide groups for Business Segment C and D as well. As a result of the proposed restructuring, a newly organized foreign holding company will own all the Company R companies engaged in Business Segment B. The restructuring is expected to improve management focus on Business Segment B.

Distributing therefore proposes the following series of transactions intended to take place on the same day:

1. Sub #2 will distribute all of the stock of Controlled to Sub #1. (“Distribution 1.”) Sub #1 will not surrender any stock of Sub #2 in the transaction.
2. Sub #1 will distribute all of the stock of Controlled to Distributing. (“Distribution 2.”) Distributing will not surrender stock of Sub #1 in the transaction.
3. Controlled will assume, or will be assigned, what is represented to be a commercially reasonable portion (based on cash flow projections, income projections, and financial ratios) of a revolving facility agreement between Distributing as borrower and an indirect wholly-owned subsidiary of Parent, as lender (the “Distributing Loan”) on which the balance as of Date 1 was \$a.
4. Distributing will distribute all of the stock of Controlled to Company R. (“Distribution 3.” Collectively, Distribution 1, Distribution 2, and Distribution 3 may hereinafter be referred to as the “Distributions.”) In return for the transfer of the stock of Controlled by Distributing to Company R, Company R will surrender a portion of the stock of Distributing.
5. In anticipation of its receipt of Controlled, Company R will form a new foreign corporation to act as a holding company for the worldwide Business Segment B group. Following the Distributions, Company R will transfer all of the Controlled stock to the new holding company. As part of the same plan, Company R expects to contribute or sell to the new holding company its other worldwide Business Segment B companies.

Prior to the Distributions, depending upon results of final valuations of the operations within the Distributing group, the following transactions may be undertaken in order to meet the active business requirement of § 355(b) with respect to Sub #1, Sub #2, and Distributing:

1. Distributing’s intercompany liability to Sub #2, in the amount as of Date 1 of \$d, will be repaid with cash. Sub #2 will distribute the cash to Sub #1, and Sub #1 will distribute the cash to Distributing.
2. Sub #1 and Sub #2 will restructure a loan from Sub #1 to Sub #2 (the “Sub #1 Loan”) into a formal interest-bearing note that is intended to qualify as a security for U.S. federal income tax purposes.
3. Sub #2 and Sub #4 will restructure certain intercompany advances from Sub #2 to Sub #4, in the amount as of Date 1 of \$b, into a formal interest-bearing note that is intended to qualify as a security for U.S. federal income tax purposes.

4, Sub #2 and Sub #5 will restructure certain intercompany advances from Sub #2 to Sub #5, in the amount as of Date 1 of \$c into a formal interest-bearing note that is intended to qualify as a security for U.S. federal income tax purposes.

5. Sub #2 will contribute the stock of Sub #7 to Sub #4.

6. Sub #1 will contribute the stock of Sub #3 to Sub #2. Sub #2 will immediately contribute the stock of Sub #3 to Sub #6. Sub #6 and Sub #3 are expected to be merged into a single corporation thereafter.

Distributing has made the following representations in connection with the Distributions:

(a) No part of the consideration to be distributed by Sub #1, Sub #2, or Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.

(b) The gross assets of the business activity actively conducted (as defined in § 355(b)(2)) by Controlled will have a fair market value equal to at least 5% of the total fair market value of Controlled's gross assets at the time of the Distributions.

(c) The gross assets of the business activity actively conducted (as defined in § 355(b)(2)) by Sub #4 will have a fair market value equal to at least 5% of the total fair market value of Sub #4's gross assets at the time of the Distributions

(d) The gross assets of the business activity actively conducted (as defined in § 355(b)(2)) by Sub #5 will have a fair market value equal to at least 5% of the total fair market value of Sub #5's gross assets at the time of the Distributions.

(e) The gross assets of the business activity actively conducted (as defined in § 355(b)(2)) by Sub #6 will have a fair market value equal to at least 5% of the total fair market value of Sub #6's gross assets at the time of the Distributions.

(f) The five years of financial information submitted on behalf of Controlled, Sub #4, Sub #5, and Sub #6 are representative of each such corporation's present operations and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(g) Immediately after the Distributions, at least 90% of the fair market value of the gross assets of Sub #2 will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(h) Immediately after the Distributions, at least 90% of the fair market value of the gross

assets of Sub #1 will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(i) Immediately after the Distributions, at least 90% of the fair market value of the gross assets of Distributing will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(j) Following the Distribution, each of Distributing, Sub #1, and Sub #2 (through its controlled corporations in each case), and each of Sub #4, Sub #5, Sub #6, and Controlled will continue the active conduct of its business, independently and with its separate employees.

(k) The Distributions are carried out for the following corporate business purpose, among others: to facilitate the internal reorganization of the Distributing group which is intended among other things to reorganize the current Board of Directors structure to institute a Board that is separately focused on the operational and strategic decisions of Business Segment B; to strengthen the focus of the worldwide Business Segment B business on global product development and to facilitate the sharing of technologies and suppliers; to enable management to financially consolidate its worldwide Business Segment B business and to facilitate business growth and management decisions; and to facilitate organic and acquisitive growth of the Business Segment B business. The transaction is motivated in whole or substantial part by this corporate business purpose.

(l) Except pursuant to Distribution 2, there is no plan or intention by the shareholders or security holders of Sub #2 to sell, exchange, transfer by gift, or otherwise dispose of any of their stock or securities in Sub #2 or Controlled after Distribution 1.

(m) Except pursuant to Distribution 3, there is no plan or intention by the shareholders or security holders of Sub #1 to sell, exchange, transfer by gift, or otherwise dispose of any of their stock or securities in Sub #1 or Controlled after Distribution 2.

(n) Except as discussed above with respect to the combination of Controlled with the worldwide Business Segment B group, there is no plan or intention by the shareholders or security shareholders of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock or securities in Distributing or Controlled after Distribution 3.

(o) There is no plan or intention by Sub #1, Sub #2, Distributing, or Controlled, directly or through any subsidiary corporation, to purchase or otherwise reacquire any of its outstanding stock after the transaction.

(p) Except as discussed above with respect to the merger of Sub #6 and Sub #3, there is no plan or intention to liquidate Distributing, Sub #1, Sub #2, Sub #4, Sub #5, Sub #6,

or Controlled, to merge any of such corporations with any other corporations, or to sell or otherwise dispose of the assets of any of such corporations after the Distributions, except in the ordinary course of business.

(q) Distribution 1 is not part of a plan or series of related transactions (within the meaning of Code § 355(e)) pursuant to which one or more persons will acquire (other than as a result of the Distribution) directly or indirectly stock possessing a 50% or greater interest (as defined in § 355(e)(4)(A)) of either Sub #2 or Controlled.

(r) Distribution 2 is not part of a plan or series of related transactions (within the meaning of Code § 355(e)) pursuant to which one or more persons will acquire (other than as a result of the Distribution) directly or indirectly stock possessing a 50% or greater interest (as defined in § 355(e)(4)(A)) of either Sub #1 or Controlled.

(s) Distribution 3 is not part of a plan or series of related transactions (within the meaning of Code § 355(e)) pursuant to which one or more persons will acquire (other than as a result of the Distribution) directly or indirectly stock possessing a 50% or greater interest (as defined in § 355(e)(4)(A)) of either Distributing or Controlled.

(t) The Distributions will not be disqualified distributions as defined in § 355(d)(2), Taking into account the application of § 355(d)(6), (7), and (8), immediately after the Distributions: (1) No person holds disqualified stock in Sub #1, Sub #2, or Distributing that constitutes a 50% or greater interest in Sub #1, Sub #2, or Distributing; and (2) no person holds disqualified stock in Controlled that constitutes a 50% or greater interest in Controlled.

(u) No intercorporate debt will exist between Controlled and either Sub #1, Sub #2, or Distributing at the time of, or subsequent to, the Distributions.

(v) Immediately before the Distributions, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. (See § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1006-32 I.R.B. 6, and as currently in effect, § 1.1502-13 as published by T.D. 8597.) Further, (1) Sub #2's excess loss account, if any, with respect to the stock of Controlled will be included in income immediately before Distribution 1; (2) Sub #1's excess loss account, if any, with respect to the stock of Controlled will be included in income immediately before Distribution 2; and (3) Distributing's excess loss account, if any, with respect to the stock of Controlled will be included in income immediately before Distribution 3.

(w) Payments made in connection with all continuing transactions, if any, between the distributing and controlled corporations will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(x) No two parties to the transactions are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).

(y) Distributing was not a United States real property holding corporation (as defined in § 897(c)(2) at any time during the five-year period ending on the date of the Distributions. Controlled was also not a United States real property holding corporation (as defined in § 897(c)(2) at any time during the five-year period ending on the date of the Distributions.

(z) Neither Distributing nor Controlled will be a United States real property holding corporation (as defined in § 897(c)(2) immediately after the Distributions.

Based solely on the information submitted and the representations made, we have concluded that:

(1) No gain or loss will be recognized by Sub #2 upon the distribution of all of the stock of Controlled in Distribution 1. Section 355(c)(1).

(2) No gain or loss will be recognized by (and no amount will be included in the income of) Sub #1 upon the receipt of the stock of Controlled in Distribution 1. Section 355(a)(1).

(3) The aggregate basis of the Controlled stock and the Sub #2 stock in the hands of Sub #1 immediately after Distribution 1 will be the same as the aggregate basis of the Sub #2 stock immediately prior to Distribution 1, allocated in proportion to the fair market value of each, in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(b).

(4) The holding period of the Controlled stock to be received by Sub #1 in Distribution 1 will include the holding period of the Sub #2 stock with respect to which the distribution will be made, provided such stock was held as a capital asset on the date of Distribution 1. Section 1223(1).

(5) As provided in § 312(h), proper allocation of earnings and profits between Sub #2 and Controlled will be made under Treas. Reg. § 1.312-10(b).

(6) No gain or loss will be recognized by Sub #1 upon the distribution of all of the stock of Controlled in Distribution 2. Section 355(c)(1).

(7) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing upon the receipt of the stock of Controlled in Distribution 2. Section 355(a)(1).

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(8) The aggregate basis of the Controlled stock and the Sub #1 stock in the hands of Distributing immediately after Distribution 2 will be the same as the aggregate basis of the Sub #1 stock immediately prior to Distribution 2, allocated in proportion to the fair market value of each, in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(b).

(9) The holding period of the Controlled stock to be received by Distributing in Distribution 2 will include the holding period of the Sub #1 stock with respect to which the distribution will be made, provided such stock was held as a capital asset on the date of Distribution 2. Section 1223(1).

(10) As provided in § 312(h), proper allocation of earnings and profits between Sub #1 and Controlled will be made under Treas. Reg. § 1.312-10(b).

(11) No gain or loss will be recognized by Distributing upon the distribution of all the stock of Controlled in Distribution 3. Section 355(c)(1) and Treas. Reg. § 1.367(e)-1(c).

(12) No gain or loss will be recognized by Distributing upon the distribution of all of the stock of Controlled in Distribution 3. Section 355(c)(1).

(13) No gain or loss will be recognized by (and no amount will be included in the income of) Company R upon the receipt of the stock of Controlled in Distribution 3. Section 355(a)(1).

(14) The aggregate basis of the Controlled stock and the Distributing stock in the hands of Company R immediately after Distribution 3 will be the same as the aggregate basis of the Distributing stock immediately prior to Distribution 3, allocated in proportion to the fair market value of each, in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(b).

(15) The holding period of the Controlled stock to be received by Company R will include the holding period of the Distributing stock with respect to which the distribution will be made, provided such stock was held as a capital asset on the date of Distribution 3. Section 1223(1).

(16) As provided in § 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made under Treas. Reg. § 1.312-10(b).

(17) Company R's transfer of the Controlled stock to a new foreign holding company will have no effect on Rulings (1) through (16) above.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in

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this letter. In particular, we express no opinion as to the tax consequences of the assumption by or assignment to Controlled of a portion of the Distributing loan; specifically, we express no opinion as to (a) whether the portion of the Distributing loan assumed by or assigned to Controlled is in fact a commercially reasonable portion, and (2) the possible application of § 482 to interest payments by Controlled on that portion of the loan. We also express no opinion as to the tax consequences of the repayment by Distributing of its intercompany liability to Sub #2, to be followed by the distribution of the cash to Sub #1 and by Sub #1 to Distributing (if such repayment and distributions do in fact take place).

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

Marlene P. Oppenheim

Marlene P. Oppenheim
Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Corporate)

cc